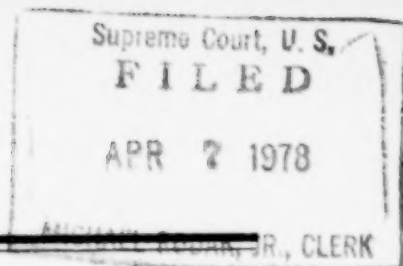


No. 77-1170



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**In the Supreme Court of the United States**

OCTOBER TERM, 1977

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**WILLIAM JAMES BIBBS, ET AL., PETITIONERS**

**v.**

**UNITED STATES OF AMERICA**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

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**BRIEF FOR THE UNITED STATES  
IN OPPOSITION**

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**OPINION BELOW**

The opinion of the court of appeals (Pet. App. A-1 to A-14) is reported at 564 F. 2d 1165.

**JURISDICTION**

The judgment of the court of appeals was entered on December 19, 1977, and a petition for rehearing was denied on January 18, 1978 (Pet. App. A-15). The petition for a writ of certiorari was filed on February 17, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**QUESTIONS PRESENTED**

1. Whether the evidence was sufficient to support the verdict.

(1)

2. Whether the district court erred in admitting rebuttal evidence of inconsistent statements of a defense witness made subsequent to that witness's testimony.

3. Whether the district court abused its discretion in excluding evidence of criminal convictions on the ground that the convictions were more than ten years old.

#### STATEMENT

After a jury trial in the United States District Court for the Middle District of Florida, petitioners were convicted on several counts of holding migrant farmworkers in a condition of involuntary servitude, in violation of 18 U.S.C. 1584 and 2. Petitioner Ivory Wilson was sentenced to three years' imprisonment, petitioner Roscoe Wilson was sentenced to three years' imprisonment, and petitioner Bibbs was sentenced to 18 months' imprisonment. The court of appeals affirmed (Pet. App. A-1 to A-14).

The evidence at trial is set forth in detail in the court of appeals' opinion (Pet. App. A-5 to A-7). Briefly, it showed that, from November 1975 to April 1976, petitioner Ivory Wilson owned an agricultural products harvesting business in which he negotiated contracts with farmers and packing companies in Florida and North Carolina to harvest their crops. Petitioner Wilson employed his brother, petitioner Roscoe Wilson, as a crew manager and employed petitioner Bibbs as a truck driver, fruit loader, field walker, and work recruiter. Petitioner Ivory Wilson required his work crews to live in housing that he provided for \$14.00 per week and charged his workers exorbitant sums for the food, alcohol, utilities, and supplies they were forced to buy. About 70 percent of the crewmen did not earn enough money during at least one week to pay the charges they incurred that week. Petitioner Ivory Wilson required these crewmen to endorse their entire payroll check back to him.

Victims Richard Lee Brown, Charles Vonzell Brown, Elliot Johnson, and Thomas Bethea quickly became indebted to petitioner Ivory Wilson after beginning to work for him. When the Browns attempted to leave his employ, petitioner Wilson, accompanied by petitioner Bibbs, stopped them with a gun and threatened to kill them unless they paid their debts. Richard Brown and Johnson thereafter tried to flee, but petitioner Roscoe Wilson found the men and ordered petitioner Bibbs and another man to beat them. Although Brown suffered internal injuries and Johnson suffered a fractured arm and an injured back, both went to work the next morning out of fear that they would be killed if they failed to appear. Bethea similarly was prevented from leaving the work camp by threat of physical harm.

#### ARGUMENT

1. Petitioners contend (Pet. 7-10) that the evidence was insufficient to support their convictions of holding persons in involuntary servitude because each of their victims was allowed on occasion to leave the work camp and had "countless reasonable methods of escape" (*id.* at 8). The court of appeals correctly held, however, that the crime of holding another to involuntary servitude is established when one places a victim "in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape" (Pet. App. A-8). See, e.g., *Pierce v. United States*, 146 F. 2d 84 (C.A. 5), certiorari denied, 324 U.S. 873. As outlined above, the evidence in this case plainly satisfied that test (Pet. App. A-8 to A-9):

[E]ach victim held to involuntary servitude attempted to escape Ivory Lee Wilson's employ on one or more occasions and was prevented from doing so by one or more defendants. Richard Lee Brown

and Elliot Johnson were beaten for attempting to escape, and all the victims were threatened with bodily harm if they attempted to escape. Charles Vonzell Brown and Thomas Bethea, the victims who were not beaten, were aware that the defendants had beaten other persons who attempted to escape. Each victim testified that he did not leave Ivory Lee Wilson's employ because he feared that he would be physically harmed by the defendants. Finally, there was ample evidence that Wilson had a motive to keep each victim in his employ, to recoup money expended on them.

Petitioners' contention that the decision below is inconsistent with *United States v. Shackney*, 333 F. 2d 475 (C.A. 2), is incorrect. In *Shackney*, the defendant was convicted of holding the alleged victims in involuntary servitude by threatening them with deportation if they left his employ. The alleged victims never told the defendant of their desire to leave and were never "restrained from leaving either by force or the threat of force" (*id.* at 479). Although the court of appeals recognized that "[v]arious combinations of physical violence [and] of indications that more would be used on any attempt to escape \* \* \*" would establish a violation of 18 U.S.C. 1584, it concluded that defendant's mere threats of deportation, "at least absent circumstances which would make such deportation equivalent to imprisonment or worse," were insufficient to subjugate the alleged victims' wills because the victims had "a choice between continued service and freedom" (*id.* at 486). "There must be 'law or force' that 'compels performance or a continuance of the service' \* \* \* for the statute to be violated." *Id.* at 487, quoting from *Clyatt v. United States*, 197 U.S. 207, 215-216. Here, by contrast, the proof showed that each of the victims conveyed to petitioners his desire to end his employment

but was restrained from leaving by petitioners' use or threats of force (Pet. App. A-8 to A-9). Thus, unlike the situation in *Shackney*, none of petitioners' victims had a true "choice between continued service and freedom" (Pet. 8); rather, experience had shown that their attempts to flee would be met with physical restraint.

2. Petitioners claim (Pet. 10-13) that the district court erred in the procedure it followed in allowing a defense witness to be impeached. Janet Boyd testified on petitioners' behalf that she served T-bone steaks to petitioners' employees twice a week. An account of this testimony was published in the newspapers. Thereafter, the government called Raymond Coleman, who related on rebuttal that Boyd had told him that she did not testify as had been reported.

Relying on Rule 613(b), Fed. R. Evid., petitioners assert that the trial judge should not have permitted Coleman to testify about Boyd's inconsistent statements until Boyd had first been called to the stand and confronted with the statements. As the court of appeals observed, however, Rule 613(b) expressly applies only to *prior* inconsistent statements of a witness. "Because the Federal Rules of Evidence do not provide a procedure for impeachment by subsequent inconsistent statements, the trial judge is free to fashion an evidentiary procedure that will 'secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.' Fed. R. Evid. 102" (Pet. App. A-10 to A-11).

Moreover, even if Rule 613(b) had been applicable to Coleman's impeachment of Boyd, the district court was not required to recall Boyd to the stand before admitting evidence of her inconsistent statements. The traditional

rule urged by petitioners was deliberately relaxed in the Federal Rules of Evidence, and it is no longer necessary that an impeaching statement first be shown to the witness. See *United States v. Barrett*, 539 F. 2d 244, 254-256 (C.A. 1); *Strudl v. American Family Mutual Insurance Co.*, 536 F. 2d 242, 244-245 (C.A. 8); Hearings on Proposed Rules of Evidence before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, 93d Cong., 1st Sess. 74-75 (1973).<sup>1</sup> Rule 613(b) merely requires that the impeached witness be "afforded an opportunity to explain or deny" the inconsistent statement. Boyd, a defense witness, was fully available to be recalled to "explain or deny" her statement to Coleman, and it thus was petitioners' failure to recall her that deprived them of the benefit, if any, of her possible explanation.<sup>2</sup>

3. Finally, there is no merit in petitioners' contention (Pet. 13-14) that the district court abused its discretion in excluding evidence of criminal convictions more than ten years old. Petitioners offered proof of their victims' prior

<sup>1</sup>For this reason *Mattox v. United States*, 156 U.S. 237, and *United States v. Hayutin*, 398 F. 2d 944 (C.A. 2), certiorari denied, 393 U.S. 961, which were decided prior to the adoption of the Federal Rules of Evidence, are inapposite. In addition, in *Mattox* the witness whose testimony was sought to be impeached had died, whereas here Boyd could have been recalled by petitioners.

<sup>2</sup>Since the district court's ruling was well within its discretion, petitioners' assertion (Pet. 14-16) that the court of appeals incorrectly concluded that they had not objected in a timely fashion to Boyd's impeachment is beside the point. In any event, the court below properly applied the plain error rule (Fed. R. Crim. P. 52(b)). Petitioners' objections at trial that Coleman's testimony was hearsay, was beyond the scope of the government's proffer, and was "not proper at this time or in this form" (Pet. 15) were insufficient to make "known to the court the action which [petitioners] desire[d] the court to take or [their] objection to the action of the court and the grounds therefor" (Fed. R. Crim. P. 51).

convictions at trial in an effort to establish that the victims "were not school-boys but instead life-long hardened criminals" who were not likely to have been put in fear by threats of violence (*id.* at 14). The court of appeals correctly noted, however, that Rule 609(b), Fed. R. Evid., bars admission of a conviction more than ten years old "unless the [district] court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect." Congress thus intended that "convictions over 10 years old [would] be admitted very rarely and only in exceptional circumstances." S. Rep. No. 93-1277, 93d Cong., 2d Sess. 15 (1974). See *United States v. Cohen*, 544 F. 2d 781, 784-785 (C.A. 5), certiorari denied, 431 U.S. 914.

Petitioners have presented no "specific facts and circumstances" to suggest that the trial judge abused his discretion in refusing to admit the evidence. Indeed, they did not even explain their theory of admissibility of the victims' prior convictions or offer any such evidence under this theory until the last victim had testified, and they were acquitted of the charges concerning that victim

(Pet. App. A-12 to A-13).<sup>3</sup> In these circumstances, the court of appeals correctly concluded that (Pet. App. A-14)

[t]he trial court \* \* \* properly could have determined that the prejudicial effect of the convictions older than ten years outweighed any probative value they might have. It is questionable whether a person convicted of a crime or released from confinement at such a remote time is less frightened by threats of physical harm than a person who has never been convicted of a crime.

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<sup>3</sup>The record shows that petitioners were not prevented from questioning any victim whom they were convicted of holding in involuntary servitude concerning convictions more than ten years old. They withdrew their question of one victim, Richard Brown (Tr. 66), without ever indicating that the question was being asked for any purpose other than attacking his credibility.

Petitioners now contend (Pet. 17-18) that the court of appeals erred in concluding that they had "not appris[ed] the trial judge of any purpose for these questions other than impeachment until they attempted to question the final government witness" (Pet. App. A-12 to A-13). In support of this contention, petitioners point to their attempt to introduce evidence concerning prior convictions, more than ten years old, of Emmanuel Raysor, a government witness whom the petitioners were not alleged to have held in involuntary servitude. However, this argument fails to appreciate the difference between evidence of convictions of alleged victims and evidence of convictions of witnesses. Petitioners' attempt to introduce evidence concerning prior convictions of a government witness was not sufficient to alert the court to the contention, presented in this Court, that they desired to introduce evidence concerning their *victims'* state of mind.

# CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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